Supreme Court, U.S.
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No. 89-1125 (3)

In the Supreme Court of the United States

OCTOBER TERM, 1989

THORN APPLE VALLEY, INC.,

Petitioner,

v.

AUTO CLUB INSURANCE ASSOCIATION, formerly known as DAIIE, SUBROGEE OF: ALI CHEHAB, FAYSAL MASLOUM, HOUHAD JAMIL BAZZI, HUSSEIN E. HABAB, NASRI JOMAA, ALI K. HASHEM, and SAMI M. ALAOUIE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

PETITIONER'S REPLY BRIEF

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8 pp

QUESTIONS PRESENTED

Petitioner incorporates by reference the questions presented in its petition for writ of certiorari to the Michigan Court of Appeals.

PARTIES TO THE PROCEEDINGS

Petitioner incorporates by reference the summary of parties to the proceedings presented in its petition for writ of certiorari to the Michigan Court of Appeals, and further states that it has no affiliated companies, no parent companies and no subsidiaries which are not wholly owned subsidiaries.

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Respondent.

PETITIONER'S REPLY BRIEF

Petitioner, Thorn Apple Valley, Inc., replies to respondent's brief in opposition to the petition for writ of certiorari to the Michigan Court of Appeals.

JURISDICTION

The jurisdiction of this Court has been invoked pursuant to 28 U.S.C. § 1257(a). Both questions presented in the petition for writ of certiorari were properly presented to the court below.

STATEMENT OF THE CASE

Petitioner incorporates by reference the statement of the case presented in the petition for writ of certiorari.

REPLY TO ARGUMENT FIRST RAISED IN RESPONDENT'S BRIEF IN OPPOSITION

I. THE QUESTIONS PRESENTED IN THE PETITION WERE PROPERLY PRESENTED TO AND DECIDED BY THE MICHIGAN COURT OF APPEALS.

Since 1986, petitioner has urged before the circuit court, the Michigan Court of Appeals and the Michigan Supreme Court that Section 514 of ERISA preempts respondent's claim against petitioner. In its brief on appeal before the Michigan Court of Appeals, petitioner framed this issue as follows:

> "Whether the Michigan No-Fault Insurance Act is preempted by Section 514 of the Employee Retirement Income Security Act, 29 USC § 1144(a), to the extent it would affect the interpretation or administration of Appellant's self-insured health benefits plan by making the plan primarily liable in automobile accident cases."

Petitioner also argued in its brief on appeal that "Auto Club's claim for reimbursement against Frederick & Herrud is preempted by ERISA because it relates to an ERISA regulated employee benefit plan." This Court's decision in *Pilot Life Insurance Co.* v. *Dedeaux*, 481 U.S. 41 (1987), which had been decided shortly before petitioner's brief to the Michigan Court of Appeals was filed, was urged extensively in that brief as controlling authority for the conclusion that respondent's claim was preempted. The Michigan Court of Appeals ultimately concluded that respondent's "claim [was] not preempted." A-7.

ERISA preemption[1] was both presented to and considered by the Michigan Court of Appeals. We respectfully submit there is no merit to respondent's contention that the issues presented in the petition were not raised or decided below.

CONCLUSION

For the foregoing reasons, and those previously urged, the petition for writ of certiorari should be granted.

Respectfully submitted,
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Dated:

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[1] The importance of this issue, as it is presented in this case, is underscored by the fact that there are currently at least three other cases pending before this Court in which similar or closely related issues are also presented. See *FMC Corp. v. Holliday*, 58 U.S.L.W. 3497 (No. 89-1048, filed December 12, 1989); *Meijer, Inc. v. Frankenmuth Mutual Insurance Co.*, 58 U.S.L.W. 3497 (No. 89-1031, filed Nov. 27, 1989); *United States Steel Corp. v. Musisko*, 58 U.S.L.W. 3474 (No. 89-952, filed Dec. 18, 1989). Until the issue of ERISA preemption in the context of disputes between employer-sponsored welfare benefit plans and automobile insurance carriers is resolved, plan fiduciaries will continue to be confronted with the untenable dilemma of whether to defend state law litigation against their plans or potentially to violate their statutory duty to administer their plans "solely in the interest of [plan] participants and beneficiaries." 29 U.S.C. § 1104(a).